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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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10/712,825

11/13/2003

Mark D. Monica

IPE-1

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28581

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07/31/2008

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EXAMINER

PATEL, TAJASH D

ART UNIT

PAPER NUMBER

3765

MAIL DATE

DELIVERY MODE

07/31/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|--|--|
| Office Action Summary | Application No. 10/712,825 | Applicant(s) MONICA, MARK D. | |
| | Examiner Tejash D. Patel | Art Unit 3765 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 March 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) See Continuation Sheet is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3-5, 10, 12-20, 22-23, 28-32, 34-47, 49-50, 52-53, 67-89, 161-166, 172-174 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Continuation of Disposition of Claims: Claims pending in the application are 1,3-5,10,12-20,22,23,28-32,34-47,49,50,52,53,67-89,161-166 and 172-174.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 3-5, 10, 12, 17-20, 22, 36-47, 49-50, 54, 67-74, 81-89, 161-166, and 172-174 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson (US 3,981,027) in view of Monica (US 6,321,386). Anderson discloses a protective pad apparatus for protecting the chest, back and shoulder that includes a shell assembly (8a, 8b, 9a, 9b) having a cushioning laminated pad being fastened thereto, col. 3, lines 1-2. Also, the shell assembly is defined by first and second halves which move relative to one another by a protector plate (1), col. 3, lines 59-68 and as shown in figures 1-3. However, Anderson does not show the pad having an outer fabric layer that reflects heat.

Monica discloses a protective pad having a shell assembly that allows air therethrough as shown in figure 10. Further, the pad can be laminated with an outer fabric layer that reflects heat, col. 4, line 61- col. 7, line 52.

It would have been obvious to one skilled in the art at the time the invention was made to substitute the protective pad of Farrell with an outer fabric layer that reflects heat as taught by Monica in order to keep the wearer cool and comfortable or depending on the end use thereof.

With regard to claims 5, 12, 18, 20, 37, 39, 41, 45, and 73, it would have been obvious to one skilled in the art at the time the invention was made to form the outer fabric of Anderson when viewed with Monica form any desired material that was available at the device was made to make the device cost effective or as required for a particular application thereof. Further, it would have been obvious that the cushioning pad and shell assembly of Anderson in view of Monica can be made of any pigmented/dyed color in order to make the device decorative or as a matter of design choice.

Furthermore, it would have been obvious to one skilled in the art the the device of Anderson when viewed with Monica can be provided with multiple layers of impact absorbing material to absorb greater force of impact as required for a particular application thereof.

3. Claims 13-16, 23, 28-32, 34-35, 52-54, and 75-80 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson in view of Monica and further in view of Bainbridge et al. (US 6,453,477). Farrell discloses the invention as set forth above except for showing the

cushioning pad including a substrate that is made of foam beads that are fused where the beads contact.

Bainbridge et al. (hereinafter Bainbridge) discloses a cushioning pad (20) including foamed beads (22) that are fused together where the beads contact one another, col. 14, lines 30-67 and as shown in figures 30-32. Also, the pad is detachably secured to an shell assembly (54) by detachable snap fasteners (60) as shown in figure 25.

It would have been obvious to one skilled in the art at the time the invention was made to substitute one of the layers of the cushioning pad of Anderson when viewed with Moncia with a substrate that is made of foam beads that are fused where the beads contact as taught by Bainbridge as an alternative but equivalent means of absorbing force of impact as known in the art. Furthermore, it would have been obvious that impact cushioning material having different absorbing properties can be substituted for the layers of Anderson as required for a particular application thereof. Also, it would have been obvious that the shell assembly of Anderson in view of Monica can be detachably secured to the pad by snap as taught by Bainbridge so that the shell is easily removed when not in use.

Response to Amendment

4. The arguments and amendment filed on March 27, 2008 have been considered. In view of such, the amendment has necessitated a newly discovered prior art to be applied thus making this office action FINAL and the arguments moot.

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

6. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure.

Art Unit: 3765

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tejash Patel whose telephone number is (571) 272-4993. The examiner's supervisor Mr. Gary Welch can be reached at (571) 272-4996. The group fax number is (571) 273-8300

July 17, 2008

/Tejash Patel/
Tejash Patel
Primary Examiner
AU 3765